

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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ILLINOIS TOOL WORKS, INC.,

Plaintiff,

v.

BENJAMIN MOORE & CO., and  
SHERWIN-WILLIAMS COMPANY.

Defendants.  
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ORDER

08-cv-756-bbc

Having reviewed the parties' submissions on claims construction, I am persuaded that construction of the following terms is necessary to resolve a disputed issue concerning infringement or invalidity: "compatible"; "the system of claim 1, comprising 10-60% TiO<sub>2</sub> particles"; "a substantially 100% solids coating"; and "a high solids coating." (The parties do not dispute the meaning of the remaining term, "substantially uniform." Dkt. #36 at 1.) Moreover, I am persuaded that a hearing would assist the court in resolving the parties' disputes. Therefore, I will grant the parties' motions requesting claims construction. Dkts. ##33 and 35. A hearing on claims construction will be held at 9:00 am on Friday, July 24, 2009. Each side will have 90 minutes to present its argument or offer testimony in support

of its proposed constructions.

One additional matter requires attention. Plaintiff and defendant Benjamin Moore & Co. have filed a stipulation of dismissal with respect to plaintiff's claims against Benjamin Moore & Co. and Benjamin Moore & Co.'s counterclaims against defendant. Although these parties have stipulated to dismissal of their respective claims and counterclaims, Fed R. Civ. P. 21 "requires a court order to add or drop parties." Ed Miniart, Inc. v. Globe Life Insurance Group, Inc., 805 F.2d 732, 736 (7th Cir. 1986). I will grant the parties' implicit request to drop defendant Benjamin Moore & Co. from this case.

#### ORDER

IT IS ORDERED that:

1. The motions requesting claims construction filed by plaintiff Illinois Tool Works, Inc. and defendant Sherwin-Williams Company, dkts. ##33 and 35, are GRANTED. A hearing on claims construction will be held at 9:00 am on Friday, July 24, 2009. Each side will have 90 minutes to present its argument or offer testimony in support of its proposed constructions.

2. The request to drop defendant Benjamin Moore & Co. from the case pursuant to the parties' stipulation of dismissal, dkt. #32, is GRANTED. The claims and counterclaims between plaintiff and defendant Benjamin Moore & Co. are DISMISSED with prejudice and

without costs to either party.

Entered this 8<sup>th</sup> day of July, 2009.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge